

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	Facility ID No. 68407
Bruno Goodworth Network, Inc.)	NAL/Acct. No. 201341420014
Licensee of Station WJPW-CD)	FRN: 0003783552
Weirton, West Virginia)	

FORFEITURE ORDER

Adopted: July 17, 2013

Released: July 18, 2013

By the Deputy Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, issued pursuant to Sections 0.61(f)(1) and 1.80(a)(1) and (2) of the Commission's rules,¹ we find that Bruno Goodworth Network, Inc., licensee of Station WJPW-CD, Weirton, West Virginia, repeatedly violated Section 73.3526(e)(11)(iii) of the Commission's Rules by failing to make the required electronic filings of the Station's Children's Television Programming Reports (FCC Form 398) with the Commission in a timely manner. Based on our review of the facts and circumstances, we conclude the Licensee is liable for a forfeiture of Nine Thousand Dollars (\$9,000.00).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture in the amount of Twelve Thousand Dollars (\$12,000) on May 21, 2013.² The NAL notified the Licensee that the failure to file the reports electronically constituted an apparent willful or repeated violation of Section 73.3526(e)(11)(iii) of the Commission's rules.³

3. The Video Division received the Licensee's response on June 20, 2013. In that response, the Licensee admits the violations identified in the NAL but nonetheless seeks a reduction or cancellation of the forfeiture based on the circumstances surrounding the late filings and the financial burden of the forfeiture on the Licensee.⁴

III. DISCUSSION

4. As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture for repeated violations of Section 73.3526(e)(11)(iii) of the Commission's rules. We ultimately conclude, however, that the forfeiture amount should be reduced to \$9,000.00.

5. The Commission is authorized to license radio and television broadcast stations and

¹ 47 C.F.R. §§ 0.61(f)(1), 1.80(a)(1) & (2).

² *Bruno Goodworth Network, Inc.*, Notice of Apparent Liability for Forfeiture, DA 13-1164 (May 21, 2013).

³ 47 C.F.R. § 73.3526(e)(11)(iii).

⁴ Licensee Response to Notice of Apparent Liability ("Licensee Response") at 1-2.

is responsible for enforcing the Commission's rules and applicable statutory provisions concerning the operation of those stations. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁵ In order to impose a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.⁶ The Commission will then issue a forfeiture order if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.⁷

6. The Community Broadcasters Protection Act requires that Class A television stations comply with all rules applicable to full-power television stations except for those rules that could not apply for technical or other reasons.⁸ The Commission rules establish that Class A licensees must (i) offer informational and educational children's programming; (ii) prepare and place in a public inspection file quarterly Children's Television Programming Reports; and (iii) electronically file those reports with the Commission.⁹

7. Commission policy establishes a base forfeiture amount of \$3,000 for failure to file a required form.¹⁰ In determining the appropriate forfeiture amount, the Commission may adjust the base amount upward or downward by considering the factors in Section 503(b)(2)(E), which include "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."

8. The Licensee admits it failed to file electronically its Children's Television Programming Reports with the Commission in a timely manner for 21 quarters during the license period. These deficiencies, regardless of the cause, constitute repeated violations of the relevant Commission rules. Nonetheless, the Licensee argues the forfeiture amount should be reduced or cancelled.

9. The Licensee first argues that the forfeiture amount should be reduced or cancelled because its failure to file the required reports in a timely manner was based on funding and staff limitations.¹¹ The Commission has long held that inadvertence or human error is not a mitigating

⁵ 47 U.S.C. § 503(b)(1) (A) & (B); 47 C.F.R. § 1.80(a)(1) & (2). The Commission may assess a forfeiture order for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001) (issuing a Notice of Apparent Liability for a cable television operator's repeated violations of the Commission's signal leakage rules). "Repeated" means that the act was committed or omitted more than once. *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁶ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁷ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002).

⁸ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594-1501A-598(1999), *codified at* 47 U.S.C. § 336(f).

⁹ *Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6366 (2000); 47 C.F.R. § 73.3526 (a)(2) & (e)(11)(iii).

¹⁰ *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

¹¹ Licensee Response at 1-3.

circumstance that would make the Licensee less culpable and therefore subject to a lesser forfeiture amount.¹² We have considered the Licensee's arguments and conclude that no reduction in the forfeiture amount is appropriate on this basis.

10. Licensee next argues that it does not have sufficient funds to pay the forfeiture without cuts in operations.¹³ The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.¹⁴

11. In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹⁵ The Commission has found that the staff's use of gross revenues is a reasonable and useful yardstick to analyze a company's financial condition for forfeiture purposes.¹⁶ Licensee submitted tax returns for the years 2010 and 2011 and a profit-loss statement for 2012 because its tax return for the year has not yet been submitted.

12. In the NAL, the Video Division proposed a forfeiture amount of \$12,000. The Commission exercises its discretion here to reduce the proposed forfeiture amount from \$12,000.00 to \$9,000. We reduce the forfeiture because the Licensee has demonstrated through the submission of financial documentation that the proposed forfeiture amount would cause financial hardship to the station.¹⁷ The tax documentation submitted by Licensee, as required under our Rules when seeking a reduction, shows that the Station has averaged approximately \$130,000 in gross revenue for the three most recent years preceding the issuance of the NAL. We therefore conclude that a small reduction in the forfeiture amount is appropriate.¹⁸

IV. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61(f)(1) and 1.80(a)(1)&(2) of the Commission's rules,¹⁹ Bruno Goodworth Network, Inc. SHALL FORFEIT to the United States the sum of Nine Thousand Dollars (\$9,000) for repeatedly violating Section 47 U.S.C. § 336(f)(2)(A)(ii) and 47 C.F.R. § 73.3526(e)(11)(iii).

¹² See *Sage Broadcasting Corp.*, Letter Decision, 25 FCC Rcd 4556, 4558 (Vid. Div. 2010); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations"); *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error).

¹³ Licensee Response at 3.

¹⁴ *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd. 7433, 7411 (2004).

¹⁵ *Agape Church, Inc.*, Forfeiture Order, 25 FCC Rcd 3732, 3734 (Vid. Div. 2010); *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁶ *Id.*

¹⁷ Licensee Response at 2-3.

¹⁸ *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of violator's gross revenues).

¹⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1)&(2).

14. In the event that the Licensee wishes to revert WJPW-CD to low power television status, the Licensee need only notify us of this election and request a change in status for the station.²⁰ Should the Licensee elect to revert the station to low power status, the Licensee would no longer be liable for the forfeiture amount described herein.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 (h) of the Commission's rules within fifteen (15) calendar days after the release date of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended. The Licensee shall send electronic notification of the payment to Peter Saharko at peter.saharko@fcc.gov on the date payment is made.

16. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the "FORF" in block number 24A (payment type code). Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

17. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Bruno Goodworth Network, Inc., 975 Greentree Road, Pittsburgh, Pennsylvania, 15220.

FEDERAL COMMUNICATIONS COMMISSION

Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau

²⁰ See 47 C.F.R. § 73.6001(d).